



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2010-15

Legistar #: 20100686

Board of Zoning Appeals Hearing: Monday, June 28, 2010 – 6:00 p.m.

Applicant: Jason D. Treadaway, Esq.
399 Washington Avenue
Marietta, GA 30060

Property Owner: Loc Van Ho
890 Franklin Road
Marietta, GA 30067

Address: 890 Franklin Road

Land Lot: 07160 **District:** 17 **Parcel:** 0130

Council Ward: 7 **Existing Zoning:** CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to increase the maximum height of a fence in a yard fronting a public/private street from 4 ft. to 6 ft. [Sec. 710.04 (A)(1)]
2. Variance to waive the requirement for a fence to be ornamental or decorative in nature in a yard fronting a public/private street in order to allow a chain link fence. [Sec. 710.04 (A)(1)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.

2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



Fence fronting Franklin Road



Recommended Action:

Partial Approval. Jason D. Treadaway, petitioner for the owner, is requesting multiple variances for a newly installed chain-link fence located at 890 Franklin Road. Loc Van Ho is the property owner and operator of Franklin Auto Repair, which has been in operation since 2004. The subject property is zoned Community Retail Commercial (CRC) while the adjacent property to the west is part of the Franklin Forest Industrial Park and is zoned Light Industrial. To the south is an apartment complex zoned Planned Residential Development – Multi Family (PRD-MF).

According to the owner, a large portion of the previous chain-link fence was damaged by an out-of-control vehicle driving along Franklin Road. Although the previous fence did not comply with the fence ordinance, it would have been treated as legally nonconforming, as there was no way to establish when it was originally constructed. Section 706.03 allows nonconforming structures be rebuilt so long as construction costs do not exceed 50% of its replacement cost.



Since the entire fence was replaced, the new fence would be expected to comply with Section 710.04, which does not permit fences to be constructed of chain link and exceeding four (4) feet in height along roadways in CRC zones. Specifically, the Code states that decorative or ornamental fences or walls shall be constructed of wood, brick, stone, or wrought iron in all zoning districts [710.04.A.1].

Similar variances from fence requirements have been heard in the past. In May 2006, variances were approved to allow a 6-foot chain link fence be placed along the roadway for the property at 100 Chert Road (V2006-16). Another request, made in August 2008, for the property located at 168 Freys Gin Road allowed the applicant to construct a 6-foot chain-link, vinyl coated fence along the road frontage (V2008-14). In both instances, safety concerns were cited as necessitating the request.

The applicant can likely exhibit the same hardships as the applicants in the previously mentioned cases. Granting the property owner a height variance to allow a 6 foot fence along Franklin Road would not create substantial negative impacts on adjacent property owners. However, the decorative fence materials required by the code would not affect security of the property, and as such do not exhibit a justifiable hardship. In addition, allowing materials that do not encourage revitalization of a depressed area is adverse to the City's stated "commit[ment] to the redevelopment of blighted and underutilized properties", as outlined in the Comprehensive Plan.

Staff recommends *approval* of the requested variance to allow a 6-foot fence front a public street.

Staff recommends *denial* of the requested variance to allow a fence to be constructed with chain link.